

INTELLECTUAL PROPERTY PROTECTION: COPYRIGHTS, TRADE MARKS & PATENTS



Patents concern the protection of inventions. An invention is patentable if it is (i) new, (ii) involves an inventive step, (iii) is capable of industrial application and (iv) is not by law specifically excluded from protection. An invention is considered new if it is not part of the state of the art on the application date. A patent application must be filed with the Bureau of Intellectual Property in Aruba.

Unfortunately, it is common practice around the world, including many Caribbean islands, to profit from someone else's IP rights and the goodwill attached thereto. Without a doubt you are familiar with the fake TOMMY HILFGER shirts, LOUIS VUITTON bags and GUCCI sunglasses that also color our streets. Less visible, but all the more alarming are fake liquors, cigarettes and pharmaceuticals. This piracy of someone else's IP is considered an IP infringement or, if it concerns exact copies, we call this counterfeit.

In case of an IP infringement, the owner of the IP rights can request the Court of First Instance in Aruba for an order to cease the infringement. Additionally, the owner can claim damages and payment of profits. The owner could also seize the infringing goods. Moreover, copyright infringement is a criminal offence that could be punished with a fine.

In this article, only three elements of IP were mentioned. Other IP you might come across are domain names, designs, plant breeders' rights and so-called neighbouring rights of artists. Be prepared and make sure all your IP rights are properly protected, because the Pirates of the Caribbean (and beyond) are on the lookout.

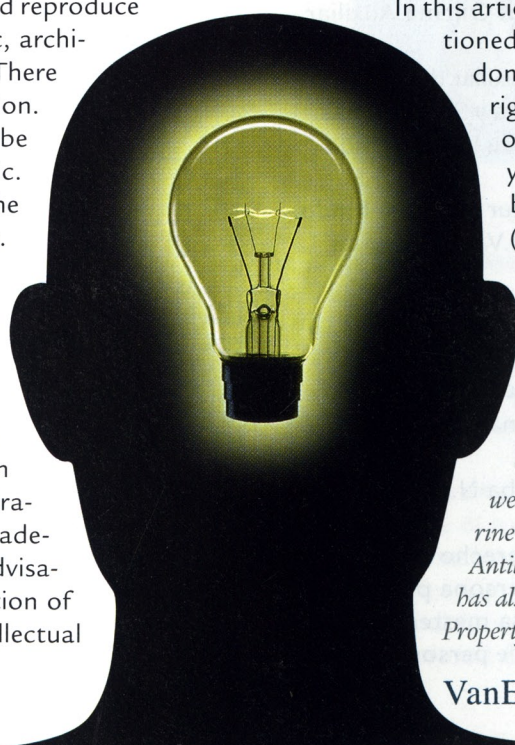
**Carine A.D. Jansch (36) studied Law at the University of Amsterdam and joined VanEps Kunneman VanDoorne in 2000. She is a member of International Trademark Association (INTA) and Asociación Interamericana de la Propiedad Industrial (ASIFI), as well as various other specialist organizations. Carine is currently the chairperson of the Netherlands Antilles Association of Trademark Attorneys. She has also published numerous articles on Intellectual Property, Advertising and E-commerce.*

VanEps Kunneman VanDoorne

Did you graduate recently? Or are you considering a career change? What's next? Starting your own business? Opening a franchise in Aruba? Becoming the manager of a high-end hotel? Or are you finally taking time off to work on a new invention? Whatever your plans are, sooner or later you will be confronted with Intellectual Property (IP). IP includes among others copyrighted works, trademarks and patents.

Copyright is the exclusive right of the maker of a work of literature, science or art to publish and reproduce such work. This can be books, music, architectural design, but also software. There are no formalities to obtain protection. However, the concerned work must be published or rather be used in public. An idea as such is not protected. The idea must at least be in tangible form.

A trade mark is a sign that is capable of distinguishing the goods or services of one company from those of other companies. In Aruba it is not required to register a trademark to acquire exclusive rights thereto. In principle, the first user of a certain trademark is assumed owner of this trademark. For evidence purposes it is advisable to file an application for registration of a trademark with the Bureau of Intellectual Property in Aruba.



PROPIEDAD INTELLECTUAL DERECHO, PROTECCION...PAKICO?

Propiedad Intelectual ta e terminologia cu ta cubri diferente tipo of sorto di propiedad cu a wordo crea for di e mente humano, e intelecto humano. E creacionnan humano aki por ehempel ta, un obra literario, un obra científico, un obra di arte, un palabra of un nomber special cu bo ta uza pa reconoce bo negoshi, servicio of producto, un logo, un slogan y tambe un invento of un diseño. Bao di propiedad intelectual ta cay pues "Derecho di Autor", "Marca", "Patente", "Diseño Industrial" y "Indicacion Geografico". Si bo a crea un obra di arte, bo por bisa cu e obra aki ta di bo. E ta bo creacion. Ora bo bende esaki, bo no ta weit'e ni sintie mas, pero e creacion ta keda di bo. Mescos ora bo scirbi un buki. Bo a laga print esaki y un otro persona ta cumpra un ehemplar. E ta bira doño di e ehemplar aki, pero abo ta e doño di e obra literario. E doño nobo no ta bira doño di e contenido di e buki.

Proteccion

Hopi biaha nos no ta para keto na e hecho c'un propiedad intelectual tambe ta un propiedad cu mester di proteccion, simplemente pasobra no ta tur hende ta reconoce nan como propiedad di otro y ta of kier uza nan sin permiso di e doño. Tuma por ehempel copiamento di canticanan di un cd. Porta bo a cumpra un cd y e cd ta di bo. Pero e creacionnan, e obranan musical riba e cd no ta bira di bo. Nan ta keda obranan di e autor. Un otro ehempel ta e paña no original cu nos por haya cumpra na hopi tienda na Aruba. Hopi di nan tin marca caro poni riba nan, pero nan no ta di e fabrica original. Hopi biaha nan ta hasta di un calidad inferior. Esaki nos ta yama "counterfeit" (marca horta). Esaki por haci cu clientenan no ta cumpra bo marca mas.

Kico abo tin di haber cu propiedad intelectual?

Nos como ciudadano no tur ora ta conciente con hopi nos tin di haber cu **propiedad intelectual**. Den un ehempel chikito nos kier a ilustra cuanto contacto directo tin entre un ama di cas, sinta merdia un rato dilanti su television, cu propiedad intelectual: e stoel por ehemplo cu e ta sinta riba dje tin un **diseño**, e television cu e ta weitando tin un **marca**, e programa cu e ta weitando tin **derecho di autor** riba dje, e television riba su mes tambe ta

un **invento**, y e ta di e tipo plasma (**invento**). Y si ta ora di cofi, no pensa mes di traha un cofi cu no ta di e **marca** cu e ta uza tur ora... E berduranan di bleki of boter cu bo ta cumpra pa bo salada (**marca**)... e auto cu bo ta core aden (**marca, invento, modelo**), etc. etc.

Historia di e terminologia "Propiedad Intelectual"

E terminologia "Propiedad Intelectual" a wordo uza oficialmente pa prome biaha na 1845 den un corte na Massachusetts, USA, caminda a trata un caso di un patente entre partidonan Davoll et al, y Brown. Akinan e hues Charles L. Woodbury a laga pone den su veredicto: "only in this way can we protect intellectual property, the labors of the mind, productions and interests as much as a man's own...as the wheat he cultivates, or the flocks he rears" (Woodbury & Mi-

not, CCD Mass. 7 F. Cas. 197, 1845). Nos ta mira cu e huez aki a reconoce patente como un "propiedad intelectual", trabao di e mente humano, cu lo mester por gosa di proteccion. E la compara esaki cu bienes manera cosechanan di cultivacion di cunu-cu, locual e tempo ey tabata propiedadnan asina importante pa e cunukeronan. Na 1846 e autor Frances, A. Nion tambe a uza e terminologia aki "Propriété Intellectuelle" den su buki "Droits civils des auteurs, artistes et inventeurs". Akinan ta unda a cumisa wak e relacion directo cu ta existi entre derecho di autor, patente, marca y diseño industrial. Prome nan tabata wordo mira como algo riba nan mes. Awendia tur ta wordo mira como propiedadnan cu a y ta nace di e creatividad di e intelecto humano. Den e proximo edicionnan nos lo bai un tiki mas riba e historia pa nos weita ya cuanto tempo pasa caba e hendenan tabata busca manera pa haya proteccion pa nan creacionnan.

Bureau na Aruba

Na Aruba tambe nos un oficina caminda bo por registra e propiedadnan aki. E ta situa den Adriaan Lacle Blvd nr. 3.

E oficina aki ta encarga cu e ehecucion di e ley di derecho di autor, ley di marca y e ley di invento. Aki bo por registra bo obranan, bo marcanan y bo inventonan. **Goswino. Oduber ta gradua na Hulanda den Hoger Financieel Bestuurs-Ambtenaar. Su experiencia ta data desde 1991 como Chef di Begrotingszaken na Departamento di Finanzas unda e tabata encarga cu presupuesto di pais Aruba. Ademas el a cubri e tereno di finanzas, director interino y adjunct directeur na e departamento aki. Desde 2002, e ta fungi como director pa departamento di Propiedad Intelectual di Aruba.*

